

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE ENROLLED ACT No. 352

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AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 23-2-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) A registered broker-dealer shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner requires by rule or otherwise. The commissioner's requirements may not exceed the limitations provided in Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o).

(b) An investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner requires by rule or otherwise. The commissioner's requirements may not exceed the limitations provided in Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a). The commissioner may prescribe by rule or otherwise the period that an investment adviser must retain records.

(c) All the records of a registered broker-dealer or an investment adviser are subject at any time to reasonable periodic, special, or other examinations by representatives of the commissioner, within or without Indiana, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. No charges or other examination fees may be assessed against a registered broker-dealer or an investment adviser as a result of an examination under this



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subsection unless the examination results in an investigation or examination made under section 16(d) of this chapter. To avoid duplication of examinations of records, the commissioner may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities and Exchange Act of 1934 (15 U.S.C. 77b et seq.).

(d) Every registered broker-dealer and investment adviser shall file financial reports and other reports as the commissioner by rule or order prescribes. The commissioner's reporting requirements for registered broker-dealers may not exceed the limitations provided in Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o). The commissioner's reporting requirements for investment advisers may not exceed the limitations provided in Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a).

(e) If the information contained in a document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(f) The commissioner may require investment advisers to furnish or disseminate certain information necessary or appropriate for the public interest or to protect investors or clients. The commissioner may determine that the information furnished to clients or prospective clients of an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq.) and the rules adopted under the Investment Advisers Act of 1940 may be used to satisfy this requirement.

(g) The commissioner ~~shall~~ **may** annually select ~~a total of as many as~~ twenty-five percent (25%) of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. The offices shall be selected at random. Each broker-dealer office that is selected shall file its compliance report according to rules adopted by the commissioner under IC 4-22-2 not more than ninety (90) days after being notified of selection under this subsection. No charges or other examination fees may be assessed against a registered broker-dealer as a result of the examination of a compliance report filed under this subsection unless the examination results in an investigation or examination made under section 16(d) of this chapter.

SECTION 2. IC 23-2-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) The commissioner may by order deny, suspend, or revoke a registration, censure a registrant or an officer, a director, a partner, or a person performing similar functions for a registrant, or other persons who

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offered or sold securities in Indiana, or bar a registrant or an officer, a director, a partner, or a person performing similar functions for a registrant or other persons who offered or sold securities in Indiana from employment with a registered broker-dealer or an investment adviser if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or an investment adviser, a partner, an officer, or a director or a person performing similar functions or a person directly or indirectly controlling the broker-dealer or an investment adviser, or other persons who offered or sold securities in Indiana has done any of the following:

- (1) Has filed an application for registration which, as of its effective date or as of a date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.
- (2) Has knowingly violated or failed to comply with this chapter or a rule under this chapter.
- (3) Is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the securities business.
- (4) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, an agent, an investment adviser, or an investment adviser representative.
- (5) Is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer, an agent, an investment adviser, an investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78kk), or is the subject of a United States post office fraud order; ~~but:~~

- (A) ~~the commissioner may not institute a revocation or suspension proceeding under this subdivision more than one (1) year from the date of the order relied on or from the date of the application for registration; whichever is later; and~~
- (B) ~~the commissioner may not enter an order under this subdivision on the basis of an order under another law, a Securities and Exchange Commission order, or a United States~~

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~~post office fraud order, unless that order was based on facts that would currently constitute a ground for an order under this section, or unless an order was not disclosed on the application for registration.~~

- (6) Has engaged in dishonest or unethical practices in the securities business.
- (7) Is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet the person's obligations as they mature. The commissioner may not enter an order against a broker-dealer or an investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser.
- (8) Has not complied with the conditions imposed by sections 9(e) and 9.1 of this chapter.
- (9) Is lacking in integrity, is not of good business reputation, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business.
- (10) Has failed to pay the proper filing fee. The commissioner may enter only a denial order under this subdivision and the commissioner shall vacate the order when the deficiency has been corrected.
- (11) Has unreasonably delayed the delivery of securities purchased or the remittance for securities sold.
- (12) Has failed to give notice in writing to a customer whether the broker-dealer is dealing as a principal or as agent, and if as an agent, whether for buyer or seller, or both.
- (13) Has failed to deliver the purchased stock certificate or other securities to a buyer or payment to a seller of securities within forty-five (45) days of the date of the transaction. (If, within forty-five (45) days of the date of the transaction, the broker-dealer or the broker-dealer's agent notifies in writing the commissioner that delivery will not be completed within the statutory period, and a written notification gives good and sufficient cause for the delay, this provision for suspension shall not be applicable. Good and sufficient cause shall include but not be limited to delay caused by a transfer agent after delivery of securities to the same for transfer on the records of the corporation. The forty-five (45) day period shall not be regarded as a standard of reasonableness for the purposes of subdivision (11).)
- (14) Has failed reasonably to supervise the person's agents or employees if the person is a broker-dealer or the person's

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investment adviser representatives or employees if the person is an investment adviser to assure their compliance with this chapter.

(15) Has been convicted within ten (10) years before the date of the application or registration of a crime involving fraud or deceit or has a felony conviction (as defined in IC 35-50-2-1) within five (5) years before the date of application or registration.

(16) Is on the most recent tax warrant list supplied to the commissioner by the department of state revenue.

(17) Has, within the last ten (10) years, been the subject of an adjudication or determination by a court of competent jurisdiction or by **the Securities and Exchange Commission, the Commodity Futures Trading Commission, or by** a securities or commodities agency or administrator of another state, and, after notice and opportunity for a hearing, has been found to have willfully violated the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 77b et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a et seq.), the Commodity Exchange Act (7 U.S.C. 1 et seq.), or the securities or commodities law of any other state.

(18) Has been denied the right to do business in the securities, **commodities, banking, financial services, or insurance** industry, or the person's respective authority to do business in the securities, **commodities, banking, financial services, or insurance** industry has been revoked **or suspended** by any other state, federal, or foreign governmental agency or self-regulatory organization for cause.

**(19) Is the subject of a cease and desist order entered by the Securities and Exchange Commission, the Commodity Futures Trading Commission, or by a securities or commodities agency or administrator of another state.**

A person described in subdivisions (1) through ~~(18)~~ **(19)** violates this chapter.

(b) The following provisions govern the application of subsection (a)(9):

(1) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other than:

- (A) the broker-dealer if the broker-dealer is an individual; or
- (B) an agent of the broker-dealer.

(2) The commissioner may not enter an order solely on the basis

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of lack of experience if the applicant or registrant is qualified by training or knowledge, or both.

(3) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer, and that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser.

(4) The commissioner may by rule provide for an examination, including an examination developed or approved by an organization of securities administrators, which may be written or oral or both, to be taken by a class of or all applicants. The commissioner may by rule or order waive the examination requirement for a person or class of persons if the commissioner determines the examination is not necessary for the protection of the public.

(5) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of a person other than:

- (A) the investment adviser if the investment adviser is an individual; or
- (B) an investment adviser representative.

(6) The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or an agent. When the commissioner finds that an applicant for a broker-dealer registration is not qualified as an investment adviser, the commissioner may by order condition the applicant's registration as a broker-dealer upon the applicant's not transacting business in Indiana as an investment adviser.

(c) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when registration became effective, unless the proceeding is instituted within the next one hundred eighty (180) days. The commissioner may by order summarily postpone or suspend registration pending final determination of a proceeding under this section concerning an application for registration or renewal of registration. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative, that:

- (1) the order has been entered and the reasons for the order; and
- (2) within fifteen (15) days after receipt of a written request the

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matter will be set for hearing.

If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) Withdrawal from registration as a broker-dealer, an agent, an investment adviser, or an investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within a shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke, suspend, or impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at the time and upon the conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may institute a revocation or suspension proceeding under subsection (a) within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(e) No order may be entered under this section except for orders of postponement entered under subsection (c) or orders of suspension under subsection (i), without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative), opportunity for hearing, and written findings of fact and conclusions of law.

(f) If the commissioner finds that a registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, an agent, an investment adviser, or an investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(g) For purposes of proceedings by the commissioner under this chapter with respect to the registration of an agent or an investment adviser representative, the commissioner may institute proceedings under subsection (a) within one (1) year after termination or expiration of a registration and enter a revocation or suspension order as of the last date on which the registration was effective.

(h) The commissioner shall notify the insurance commissioner when

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an order is issued under this section denying, suspending, or revoking registration.

(i) The commissioner may by order summarily suspend a registration pending a final determination of a proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the registrant, as well as the employer if the registrant is an agent, that the order has been entered. The notice must include a statement:

(1) of reasons for entry of the order; and

(2) that within fifteen (15) days after the receipt of a written request the matter will be set down for a hearing.

If a hearing is not requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until a final determination.

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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SEA 352 — Concur+

